JUL 15 1993

No. 92-1239

In The

Supreme Court of the United States

October Term, 1992

J.E.B.,

Petitioner,

vs.

T.B.,

Respondent.

On Writ Of Certiorari To The
Supreme Court Of The State Of Alabama

JOINT APPENDIX

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TRANSCRIPT OF VOIR DIRE AND JURY SELECTION

[RT-4] THE COURT: Ladies and gentlemen, I need to ask you a few questions touching your qualifications to serve as jurors in this case, and then the attorneys will have an opportunity to ask you some questions. It's very important that you listen carefully to the questions and that you answer fully and fairly so that the parties can get a fair and impartial jury in the case. Basically, this is a paternity case. This is a paternity case brought by the State of Alabama on the relationship of T.B. against Mr. B. – Mr. J.E.B., Sr. The issue for the jury to determine in this case is whether Mr. B. is the father of a child born to Miss B. on or about May 16th, 1989, a male child, P.R.B.

Now, with that brief explanation to you of the nature of this case, I need to ask you a few questions.

The nominal plaintiff in the case is the State, but the action is brought on behalf of the mother of the child, Miss T.B. Would you stand, please, ma'am.

Are any of you related by blood or marriage to Miss B? Thank you.

[RT-5] (No response.)

The Assistant District Attorney representing Miss B. in the State in this case is Mr. William Tally, who is standing now.

Are any of you related by blood or marriage to Mr. Tally who practices law here in Scottsboro?

(No response.)

Are any of you related by blood or marriage to any of the attorneys in the District Attorney's office, Mr. Dwight Duke or Mr. Charlie Rhodes or another part-time Assistant District Attorney, Mr. Tommy Armstrong.

Are any of you related by blood or marriage to any of those lawyers?

(No response.)

The defendant in this case is Mr. J.E.B., Sr. Would you stand, please, sir. Are any of you – he is from ___, ___, I believe. Are any of you related by blood [RT-6] or marriage to Mr. B?

(No response.)

Mr. B. is represented in the case by Mr. John Porter, an attorney from Scottsboro, who is standing now. Are any of you related by blood or marriage to Mr. Porter or to those associated in the practice of law with Mr. Porter in the firm of Livingston, Porter and Paulk, – Mr. Jack Livingston or Mr. Gerald Paulk?

(No response.)

Do any of you have any ongoing business connection, or you [sic] a partner in business, or do you have any ongoing business connection with either of the parties in this case, Miss B. or Mr. B?

(No response.)

Is any one of you a witness in the case so far as you know?

[RT-7] (No response.)

Let me go one step further and ask you this, Ladies and Gentlemen of the jury panel, have you read, heard or seen anything about the case whether it's this morning while you were waiting for the trial of this case, while you were waiting here as jurors in the courthouse, or whether you have leaned across the back fence and talked to a neighbor about it or something you may have heard from whatever source? Has any one of you heard anything about the facts in this case?

(No response.)

And I have one final question and the attorneys will then have some questions, and that is this: Based upon the limited information you have been given about this case, the issue that will be tried before the jury and the identity of parties and the incident out of which it arises, does any one of you, Ladies and Gentlemen on the jury panel, know of any reason why if you are selected as a juror [RT-8] in this case you could not give the plaintiff and the defendant a fair and impartial trial? Any of you know of any reason, whatever that may be, even if it may be private to you and I will not inquire into it. If you are of the notion based upon what's been described to you before you have heard any evidence that you cannot be a fair and impartial juror in this case for any reason, I need you to signify now.

Yes, sir, Mr. Young? You feel you couldn't be fair and impartial?

PROSPECTIVE JUROR YOUNG: Well, I don't believe in judging. It goes against my religious beliefs.

THE COURT: I appreciate that. I need to know if any of you Ladies and Gentlemen are of that notion.

PROSPECTIVE JUROR SEALEY: For the same reason.

THE COURT: You are Mrs. Sealey?

PROSPECTIVE JUROR SEALEY: Yes, sir.

[RT-9] THE COURT: Anyone else?

PROSPECTIVE JUROR SULLIVAN: For the same reason.

THE COURT: Mr. Sullivan, that's a religious conviction?

PROSPECTIVE JUROR SULLIVAN: Yes, sir.

THE COURT: I should say religious belief. When I say conviction, people get the wrong notion.

Anyone else?

(No response.)

VOIR DIRE BY THE STATE

MR. TALLY: Ladies and gentlemen, as the Judge has told you, I am Bill Tally. I represent T.B. who is the plaintiff in this case. In other words, she brought an action for a paternity, and I am sure you know what that involves. It involves getting into some [RT-10] issues that may not be pleasant. Sometimes we have to get into areas perhaps we prefer that we didn't get into. If you serve on this jury, you have to understand that we explore issues and matters that there is no way to avoid getting down to the basic facts as to what happened.

And I first want to know does that make you uncomfortable? Are any of you just a little uneasy sitting in on a case that's going to involve determining who the father of a child is? Does that make you uneasy or maybe a little bashful about having to sit on a case like that? Does that cause any of you any difficulty?

(No response.)

Mr. B. is seated here next to his lawyer. I believe he is from ___, ___ or ___ - ___ area.

Do any of you happen to know him or any of his family?

(No response.)

[RT-11] He is represented by John Porter of the firm of Livingston, Porter and Paulk. Do you any of you know John in any capacity whether it's just nodding to him on the street or whether you may go to church with him or belong to the same club or have you used him as a lawyer? Does anybody in this panel know John?

Mrs. Parks, how do you know him, please, ma'am?

PROSPECTIVE JUROR PARKS: Neighbor and we go to church together.

MR. TALLY: Anyone else that knows Mr. Porter? Have any of you ever used him for a lawyer, had any connection with him?

(No response.)

He has two partners, Gerald Paulk and Jack Livingston. Any of you know Gerald Paulk?

Yes, ma'am, how do you know him, Mrs. Whatley?

[RT-12] PROSPECTIVE JUROR WHATLEY: I have known Gerald for several years before he moved to Scottsboro. Tuscaloosa.

MR. TALLY: You knew him before he lived here then?

PROSPECTIVE JUROR WHATLEY: Yes.

MR. TALLY: Was that just a social?

PROSPECTIVE JUROR WHATLEY: Just social is all.

Mr. TALLY: Anyone else? Have any of you ever used Mr. Paulk for a lawyer maybe just making a deed, something simple?

(No response.)

What about Jack Livingston? Mrs. Whatley, is that the same, you have known Jack, I guess, for a number of years?

PROSPECTIVE JUROR WHATLEY: Yes.

MR. TALLY: Has he done any legal work for you?

[RT-13] PROSPECTIVE JUROR WHATLEY: Wrote my will.

MR. TALLY: Yes, ma'am?

PROSPECTIVE JUROR WOMACK: He drew up my husband's and my will. He has made a couple of deeds for us.

MR. TALLY: The fact that his partner is now representing Mr. B. in court, would that have any effect on

your judgment as to who is right and who is wrong in this case?

PROSPECTIVE JUROR WOMACK: I don't think so.

MR. TALLY: And you, Mrs. Whatley, the same? Who else do we have back there; how about you, ma'am?

PROSPECTIVE JUROR SEALEY: We have used him as a lawyer.

MR. TALLY: Start on the back. Yes, ma'am?

PROSPECTIVE JUROR GALLOWAY: He handled a divorce for me a few years ago.

[RT-14] MR. TALLY: Who else?

PROSPECTIVE JUROR CLAY: I used to work for Mr. Livingston.

MR. TALLY: Used to work for him?

PROSPECTIVE JUROR CLAY: Yes.

MR. TALLY: Mrs. Galloway, would his representation of you in the past have any bearing on your ability to be impartial in this case and Mrs. Clay? It wouldn't affect you at all? Thank you.

Anybody else then that knows Mr. Livingston or has used him for a lawyer?

(No response.)

As I stated at the outset, anytime you are involved in a paternity case, you do have to delve into issues which may be somewhat unpleasant at times, and I have to do the same thing here. Neither I or Mr. Porter want to

embarrass anyone or put anyone in an uncomfortable position- but there are certain things [RT-15] we have to know to choose the jury. We want the fairest, most impartial group we can possibly have and everyone due to their background, due to their raising, circumstances in the past is going to have a certain outlook on life; that's only human. That's the reason we are asking you these questions.

And I have to ask you if anyone in this group has had either themselves or a relative or family member involved in a similar situation where that person has been accused of being the father of a child where the child was born out of wedlock or there was a dispute about who the father was? Do you have anybody in your family or yourself has that ever happened to you?

PROSPECTIVE JUROR ROGERS: My sister.

MR. TALLY: If any of you would rather come down and talk about this privately, do you mind telling me a little more about it?

PROSPECTIVE JUROR ROGERS: Well, my sister, younger than me, she got pregnant by one of the [RT-16] county's officers. They had kind of a little dispute over that.

MR. TALLY: So that was your sister then, and it was another man who was involved?

PROSPECTIVE JUROR ROGERS: Yes.

MR. TALLY: Anyone else? This could be a relative, family member, even a close friend, somebody this has happened to that you know of; in other words, you are aware of this situation.

Yes, ma'am?

PROSPECTIVE JUROR CARTER: I did but they didn't have a court over it, you know, my niece had a baby out of wedlock, but nothing was ever done, you know.

MR. TALLY: Nothing was ever pursued on it?

PROSPECTIVE JUROR CARTER: No.

MR. TALLY: I appreciate y'all's answers.

Anyone else?

(No response.)

[RT-17] Do any of you because of some experience in the past or some belief that you have, any of you have doubts about whether a man should be pursued as the father of a child born out of wedlock? Does that make you feel uncomfortable? In other words, that if a woman bears a child out of wedlock, she pursues a man that's alleged to be responsible? Do you have any difficulty with that at all? If you do, just speak up. This is no time to be bashful.

(No response.)

I guess just one final question would be if each of you feel that you can make a promise that if you are selected to serve on this case, that you will follow the Judge's instructions and enter a verdict according with the Judge's instructions and the provisions of the law. Can each of you do that, promise to abide by the Judge's directions; in other words, make your decision based on the facts?

That's all I have. Thank you very much.

[RT-18] THE COURT: Let me ask one question before you start. Mrs. Rogers and Mrs. Carter, we appreciate your answering the question. I understand it is essentially one I need to ask you one thing further. In view of that fact in your family, each of you, would that interfere in any way with your ability to sit impartially as a juror in this case?

PROSPECTIVE JUROR ROGERS: I don't think so.

PROSPECTIVE JUROR CARTER: I will be honest. I am not sure.

THE COURT: Thank you, ma'am.

MR. PORTER: Mrs. Carter, I appreciate your response that you are not sure because that kind of honesty is important to us today as Mr. Tally and I ask you these questions. We want you to be honest with us. We don't want you to hold anything back and think well maybe that applies to me and maybe it doesn't. The questions that I ask and those that Bill asked if in a few minutes you recall that maybe you should have [RT-19] responded to one of his questions and you just remembered it, go ahead and respond. I am sure that he would appreciate it and so would I. That's what we want is honest, straight-forward answers to some maybe delicate questions about family matters, and that is what we are here about today is family matters.

As the Judge told you, I am here today with Mr. J.B. and his wife of 20 years, F.B., and he is accused of being the father of Miss B.'s child. That's what we are here about, and that is a delicate question because it involves some delicate issues, and there may be some matters of

that type that are discussed during the trial of this case. I don't expect it to be anything more than you hear on – certainly not anymore than you hear on the daytime soap operas should you watch those or the evening news even. But for us here in Scottsboro and for this panel, it may be something that you are not used to discussing. So if some of these matters are a little delicate and you would rather not discuss them, that's fine if you rather not listen to them. You can turn off your T.V. if you don't like the soap operas or you can [RT-20] turn off the T.V. if you don't like the news. We don't want to put you in a situation you feel uncomfortable sitting through at trial where these kind of matters are discussed. That's the reason we ask these questions because we don't want to, as Mr. Tally said, we don't want to embarrass you by any means. We just want to be able to ask you some questions that reflect on your background and get to know you in these few minutes we have got, get to know you a little bit better so we can get a jury that sits in this box down here – 12 jurors that have absolutely no feelings one way or another about this case when we start so that you can take the evidence that comes to you and apply that evidence to what the Judge says and come up with a verdict in the case.

So that's what we are doing in these few minutes is trying to get to know you a little bit better.

In trying to get to know you a little better, let me ask you if anybody knows T.B? I believe she is from ___. She works in ___, Mr. Casey, [RT-21] is that right?

PROSPECTIVE JUROR CASEY: Yes

MR. PORTER: How do you know her, friendly?

PROSPECTIVE JUROR CASEY: Went to school.

MR. PORTER: Went to school with her?

PROSPECTIVE JUROR CASEY: Yes.

MR. PORTER: Anyone else know Miss B?

Mr. Casey, the fact that you know her, would you tend to believe what she says as opposed to someone else possibly?

PROSPECTIVE JUROR CASEY: No, sir.

MR. PORTER: Give her side more weight than another side?

PROSPECTIVE JUROR CASEY: No, sir.

MR. PORTER: Have you kept up with her in the years since you went to school?

[RT-22] PROSPECTIVE JUROR CASEY: No, sir.

MR. PORTER: Do you see her any now? She lives in ___ and so do you?

PROSPECTIVE JUROR CASEY: Very seldom.

MR. PORTER: Let me ask this about her family. I believe her father's name is A., call him A. He works at T.V.A.; mother works at Andover Togs. I don't know what her name is. It's something B. Anybody know them, A.B. or his wife?

Mr. Cooper, how do you know them?

PROSPECTIVE JUROR COOPER: I used to work with him when he worked at T.V.A.

MR. PORTER: How long ago has that been?

PROSPECTIVE JUROR COOPER: Two years ago.

MR. PORTER: Did you ever hear him discuss this situation, the fact that Miss B. – Miss T.B. – had a baby?

[RT-23] PROSPECTIVE JUROR COOPER: We worked on the same project. We didn't work side by side. I just knew his name.

MR. PORTER: Would you consider yourself a friend of his or just co-employee?

PROSPECTIVE JUROR COOPER: Just a co-employee.

MR. PORTER: Anybody else? All right, sir. Mr. Bishop, did you work with Mr. B?

PROSPECTIVE JUROR BISHOP: Yes, sir.

MR. PORTER: Did you work closely with him or are you just co-employees?

PROSPECTIVE JUROR BISHOP: We were co-employees.

MR. PORTER: You ever hear him discuss the situation with his daughter and things of that nature?

PROSPECTIVE JUROR BISHOP: No.

MR. PORTER: Anyone else; did I see anymore?

(No response.)

[RT-24] Let me just ask Mr. Cooper and Mr. Bishop, the fact that you knew or know Mr. A.B. or A.B., would that tend to influence you one way or the other in this case?

Thank you.

There is a fellow that may testify in this case and his name will come up certainly during the case. I believe his name is Ricky Stone. Does anybody know Ricky Stone? He lives also in ___. Does anybody know him?

(No response.)

Mr. Tally asked the question one way and got a couple of answers the other way. His question was: Has anybody ever been sued for paternity or been involved, and someone tried to claim that either you or a family member was the father and we got two responses on the other side. That is, that somebody in your family or somebody that you knew closely had a child and sought paternity. That's my question straightforward. Has anybody in your family – by your family, I mean your mother, father, sister, brother, your children, close [RT-25] aunts and uncles, cousin, things like that, people you consider to be close family members – have they ever been involved in a paternity matter where they have had a child and attempted to establish the paternity of someone? We got two answers already, Mrs. Carter and Mrs. Rogers. That's the kind of answers that we are looking for – that I am looking for. So those are still the only two responses?

Any of you by nature either of your current employment, your past employment, or your education and training of any kind have any expertise in doing lab work where you sit around and you look – in this case maybe blood samples – or any kind of lab work where you try to figure out what's in something, chemistry or biology, something like that so that you consider yourself to have a little bit more training than, I suppose, an average

person, if you understand my question. Anybody ever have any kind of particular training in doing lab work, ever been involved in that field where you did testing for possibly the environmental work or chemistry work, things like that you did that on a regular basis?

(No response.)

[RT-26] Let me explain in this case that there may be someone to come testify to you about trying to match some blood samples and trying to find who the father of this child is, and there may be some testimony about how you go about that, take blood samples from one person and another person and you match it all up and you up it to some numbers and statistics and bingo, you come out with a number. So really my question is: If that testimony is presented to you, would it be kind of testimony – kind of things that you are used to, kind of things you hear about whether it's blood testing or any other kind of testing on a regular basis so that you would know a little bit more about it than I do certainly as a non-chemist, non-lab person?

(No response.)

Along the same line as my questions about paternity matters, have any of you ever been involved in a situation where either the State of Alabama through Mr. Tally or one of the other Assistant District Attorneys or [RT-27] any other state has attempted to collect child support for you – back child support – been involved in that kind of issue?

Several. Okay. Mrs. Clay, Mrs. Galloway.

PROSPECTIVE JUROR GALLOWAY: I am going through it right now.

MR. PORTER: Are you going through Mr. Tally's office?

PROSPECTIVE JUROR GALLOWAY: No; through Dwight Duke.

PROSPECTIVE JUROR CLAY: It was years ago. My husband had to pay child support, and he left the state.

MR. PORTER: Anybody else now?

PROSPECTIVE JUROR JOHNSON: Would you repeat the question?

MR. PORTER: I will do my best. It was a long one. Has anyone ever been in the situation where they have either had the State of Alabama or another official from another state, whatever state it might have been, [RT-28] such as in the same position as Mr. Tally, the Assistant District Attorney, or a private attorney attempt to collect back child support for you; is that a little clearer: Probably not. Anybody else that applies to?

(No response.)

Now, how about from you, anybody been in the situation where someone has attempted to collect child support from you instead of for you? Let me say – let me expand this. I probably didn't make it clear. This is to your immediate family, too, just not particularly you. I would like to know if any of your close family members have been involved in this situation.

Mrs. Johnson, I got a response. Which way does it go?

PROSPECTIVE JUROR JOHNSON: My husband has to pay child support. I also collect it.

MR. PORTER: You also collect it?

PROSPECTIVE JUROR JOHNSON: Yes.

[RT-29] MR. PORTER: Anyone else?

PROSPECTIVE JUROR BROOKS: I had to pay child support.

MR. PORTER: Mr. Brooks.

PROSPECTIVE JUROR ROGERS: My sister is trying to get hers.

MR. PORTER: Same situation?

PROSPECTIVE JUROR ROGERS: Yes.

MR. PORTER: Anyone else?

PROSPECTIVE JUROR HAYNES: My daughter is getting it, but it's voluntarily.

MR. PORTER: It's voluntarily. Thank you, Mrs. Haynes.

Anyone else now?

(No response.)

Do any of you know Bill Tally, the Assistant D.A. in this case, know him – same [RT-30] question he asked about me – know him personally, socially, ever been to him for a lawyer, anything like that?

Mrs. Baker?

PROSPECTIVE JUROR BAKER: He was the attorney for my sister in a divorce action.

MR. PORTER: All right. Anybody else?

Mrs. Parks?

PROSPECTIVE JUROR PARKS: He just lives down the street, and I just know him.

MR. PORTER: Anybody else?

Mrs. Whatley, Mrs. Wilhelm. Anybody else?

PROSPECTIVE JUROR WILHELM: I worked for the other part-time Assistant D.A.

MR. PORTER: You do now or you did?

PROSPECTIVE JUROR WILHELM: I used to.

[RT-31] MR. PORTER: You used to work for Tommy?

PROSPECTIVE JUROR WILHELM: Yes.

MR. PORTER: Anybody else?

Anybody ever had him do any kind of legal work for you that hasn't already responded either as a private attorney? He is involved in private practice here and also does child support work with the District Attorney's office.

(No response.)

Mrs. Galloway, you may not have met him yet, but if you have a child support matter, you probably will. Anybody else then?

(No response.)

The two ladies employed in his office that handle processing that kind of matters, their names are Jo Ann Holland and Carolyn Jeffrey. Anybody know them?

[RT-32] Mrs. Wilhelm, Mrs. Parks, Mrs. Whatley, I imagine you do. Anybody else?

(No response.)

Those that responded that they know either Mr. Tally or those ladies that work in the child support office, the fact that you know them, would that tend to influence you one way or the other in this case either positively or negatively either way?

(No response.)

Having heard all what I have said and what Mr. Tally said and what the Judge has said, is there anybody that would rather not sit on this case that hasn't already responded for whatever reason, and I am not going to ask the reason. You just rather not sit here and listen to this case or you feel right now one way or the other so that it would influence you so you couldn't render a fair verdict; anybody feel that way, and I am not going to ask you why. Okay. Thank you. Appreciate your [RT-33] answers. Thank you very much.

(Side-bar conference, outside jury's hearing.)

THE COURT: Any challenges by the state?

MR. TALLY: 22 and 24, two individuals indicated they would not serve due to religious convictions.

THE COURT: Actually, there are three.

MR. TALLY: I only object to two.

THE COURT: I will grant 22. I will grant 24. Any others?

MR. TALLY: I recall the third one – did you mention that one, John?

MR. PORTER: 37.

MR. TALLY: 37 was the third religious. If it's my turn, I object to that.

[RT-34] THE COURT: I will take 37 off. Any others from the state?

MR. TALLY: That's all.

THE COURT: How about you?

MR. PORTER: I don't think so, Judge. Mrs. Carter said she wasn't sure.

THE COURT: I think I ought to ask her a further question.

(Jury's hearing:)

THE COURT: Mrs. Carter, after hearing these lawyer's questions, have you changed your mind in any way; you feel like you are not sure whether you could be impartial?

PROSPECTIVE JUROR CARTER: I probably could.

THE COURT: Probably could be impartial. Let me turn that around and ask you if there is any question in your mind about it?

[RT-35] PROSPECTIVE JUROR CARTER: No.

(Outside jury's hearing:)

THE COURT: You challenge her?

MR. PORTER: I challenge her.

THE COURT: I deny the challenge.

Any reason to impanel an alternate juror?

MR. TALLY: I don't think so.

THE COURT: No.

(Jury struck.)

(Side-bar conference, outside jury's hearing.)

MR. PORTER: Judge, before the jury is impaneled, I propose to the court that I do not know the appropriate method to do this, we would challenge the state's strikes on the *Batson* decision and other decisions that have followed that I have heard and understand that gender [RT-36] based strikes based upon gender are just as [in]valid on race strikes based on the race – the state's strikes with the exception of one were males. Virtually none of them answered any questions whatsoever which would show prejudice or bias in any way, and I submit to the court that they were basically struck solely upon gender.

THE COURT: You are talking about gender strikes?

MR. PORTER: Yes, sir. Gender strikes. Again, I propose to the court I don't know exactly how to do this. I have never done it especially on gender.

THE COURT: You are not raising a race question? I am going to deny your motion – your challenges – on the jury that's been impaneled on the basis of gender strikes.

MR. PORTER: We would also point out to the court the venire is made up of approximately 75 percent women, which also adds to the fact that he has struck all but one of the men.

[RT-37] THE COURT: For the record, I will relate that there were 62 jurors on this morning's voir dire, and I did not need all 62 so I instructed the clerk to take every other name until we got 36. That's the way these people wound up where they are. I overrule your objection and deny your motion.

(A jury was sworn and impaneled.)

(Jury present.)

[CR36]

THIRTY-EIGHTH JUDICIAL CIRCUIT OF ALABAMA
IN THE CIRCUIT COURT OF
JACKSON COUNTY, ALABAMA

STATE OF ALABAMA, ex rel., TERESIA BIBLE, PLAINTIFF	)	CIVIL ACTION NO.: 90-314
VS.	)	
JAMES EDWARD BOWMAN, SR., DEFENDANT	)	

ORDER

Trial of this cause was commenced on October 21, 1991, and a evidence was submitted to a jury duly and lawfully impanelled and consisting of, to wit: Teresa L. Forrest and eleven other good and lawful persons.

On October 22, 1991 after duly deliberating on the evidence, the jury returned the following verdict:

> "WE, THE JURY, FIND THE ISSUE IN FAVOR OF THE STATE. WE FIND THAT DEFENDANT JAMES E. BOWMAN, SR. IS THE FATHER OF THE CHILD, PHILLIP RHETT BOWMAN BIBLE.
>
> /S/ TERESA L. FOREST
> FOREPERSON"

ACCORDINGLY, IT IS ORDERED AND ADJUDGED:

1. That the defendant, James E. Bowman, Sr., is determined to be the father of Phillip Rhett Bowman Bible, born May 16, 1989, and judgment is entered accordingly;

2. That, pursuant to Rule 54 (b), there being no just cause for delay, final judgment is expressly entered on the issue of paternity in this cause;

3. That, the issue of the amount of child support obligation of the defendant for the support and maintenance of the minor child is scheduled for hearing before this court on the 6th day of November, 1991 at 1:30 p.m., and the parties are directed, prior to that date, to supplement child support affidavits and child support guidelines previously filed in this cause, in the event any changes in that information have occurred, and the parties shall include the amount of monthly health insurance premium the mother is paying currently for health insurance coverage for the [CR37] child and shall also include the actual amount of monthly child care expenses the mother is incurring for the child and whether such child care expense is in a home or day care center.

ORDERED this the 23rd day of October, 1991.

/S/ Robert L. Hodges
Robert L. Hodges,
Circuit Judge

John Porter, III, Attorney
William Tally, Assistant District Attorney

[CR44]

STATE OF ALABAMA, ex rel., TERESA BIBLE	)	IN THE CIRCUIT COURT FOR JACKSON COUNTY, ALABAMA
PLAINTIFF	)	
VS.	)	CASE NO: CV-90-314
JAMES EDWARD BOWMAN	)	
DEFENDANT	)	

POST-JUDGMENT MOTION

NOW COMES the defendant herein and pursuant to Rule 50 of the Alabama Rules of Civil Procedure, does hereby move this Court for entry of an Order of Judgment Notwithstanding the Verdict or in the alternative, pursuant to Rule 59 of the Alabama Rules of Civil Procedure, does hereby move this Court for a new trial or in the alternative to alter, amend or vacate the Judgment entered by this Court on the 23rd day of October, 1991 and the Order of Support dated November 8, 1991 and in support thereof does hereby say as follows:

1. The verdict of the jury and judgment entered thereon is against the great weight of the evidence.

2. The verdict of the jury and the judgment entered thereon is contrary to Alabama law and the facts presented to the Court.

3. The Court erred in denying the defendant's objection to the State's unconstitutional, gender based peremptory jury challenges.

4. The verdict of the jury and the judgment entered thereon is void in that the defendant's fifth amendment right to equal protection of the law was violated by the State's exercising its peremptory jury challenges based solely upon gender.

5. The jury as impaneled containing all females, violated the [CR45] defendant's right to equal protection of the law as guaranteed by the Fifth Amendment of the United States Constitution.

6. The State's use of peremptory jury challenges, eliminating all males from the jury, violated the defendant's Fifth Amendment right to equal protection of the laws.

7. After the defendant's objection to the State's use of peremptory strikes exercised against male members of the jury, the State failed to articulate a nondiscriminatory reason for challenging the jurors related to the particular case to be tried.

8. The Court erred in failing to require the State to articulate a nondiscriminatory reason for challenging the jurors related to this particular case.

9. The Court erred in allowing the State's witness to testify regarding the results of paternity blood tests without first laying the proper predicate.

10. The Court erred in allowing the State's witness to testify regarding the "composite" paternity blood test results, without first laying the proper predicate.

11. The Court erred in allowing the State's witness to testify regarding the "composite" blood test results,

without first establishing a scientifically reliable basis for such composite results.

12. The Court erred in allowing the State's witness to testify regarding the use of a DNA Test without first determining the admissability of such tests in accordance with the holding of the Supreme Court of the State of Alabama found in *Ex parte Waylon Dwight Perry* ___ So. 2d ___ (1991, 89-1534).

[CR46] 13. The Court erred in allowing the State's witness to testify regarding the results of the paternity blood test without first establishing that such tests were generally accepted in the scientific community.

14. The Court erred in allowing the State's witness to testify regarding the results of paternity blood tests without requiring the State to first establish that the techniques used for such tests were capable of producing reliable results and that they are generally accepted in the scientific community.

15. The Court erred in allowing the State's witness to testify regarding the results of paternity blood tests without first establishing the testing laboratory performed generally accepted scientific techniques without error in the performance or interpretation of the tests.

16. The Court erred in allowing the State's witness to testify regarding paternity blood testing without first establishing the minimal foundation of predicate including the establishment of a chain of identification from the time blood samples were taken to the time the samples were analyzed, by first hand knowledge of the witness.

17. The Court erred in sustaining the State's objections to the defendant's testimony regarding his impotency or sterility.

18. The Court erred in denying the defendant's motion for directed verdict at the close of the State's evidence.

19. The Court erred in denying the defendant's motion to exclude the State's evidence, or portions thereof, at the close of the State's case.

[CR47] 20. The Court erred in denying the defendant's motion for directed verdict at the close of all the evidence.

21. The Court erred in denying the defendant's motion to exclude the State's evidence, or portions thereof, made at the close of all the evidence.

WHEREFORE, the defendant does hereby pray that this Court will enter an Order of Judgment Notwithstanding the Verdict in the defendant's favor on all issues, or in the alternative to grant to the defendant a new trial on all issues or to alter, amend or vacate the Judgment in accordance with this Motion.

LIVINGSTON, PORTER & PAULK, P.C.

/S/ John F. Porter, III
John F. Porter, III
Attorney for Defendant
P. O. Box 1108
Scottsboro, Alabama 35768
Phone: (205) 259-1919

[CR49]

STATE OF ALABAMA, ex rel., TERESA BIBLE	)	IN THE CIRCUIT
	)	COURT FOR
PLAINTIFF	)	JACKSON
	)	COUNTY, ALABAMA
VS.	)	
	)	CASE NO:
JAMES EDWARD BOWMAN	)	CV-90-314
	)	
DEFENDANT	)	

AFFIDAVIT IN SUPPORT OF
POST JUDGMENT MOTION

NOW COMES the defendant herein and does hereby submit the following affidavit in support of his post judgment motion in regard to the voir dire, striking and impaneling of the jury.

Before me, the undersigned authority, in and for said county and state, did personally appear John F. Porter, III, who being known to me and being first duly sworn did depose and say as follows:

My name is John F. Porter, III and I am over the age of nineteen years. I am a licensed, practicing attorney in Scottsboro, Jackson County, Alabama and I am counsel of record and trial counsel for James Edward Bowman, Sr. in this matter. I am familiar with the proceedings surrounding the voir dire of the jury by both the State and the defendant, the various peremptory strikes exercised by the State and the impaneling of the jury. A number of jurors were summoned for jury service during the week of October 21, 1991. A copy of the juror questionnaire forms submitted by all of the potential jurors is attached hereto and incorporated herein

by reference as Exhibit "A". ** Omitted – Found at Clerk's Record, Pages 52 to 59 **

From this list of jurors, a panel of thirty-six (36) was drawn as the jury venire for this particular case from which the jury would be selected. Of this panel of 36, 24 jurors were female and [CR50] 12 were male.

After voir dire was completed, the Court excused three jurors for cause, being Davis Cooper, Dennis Young and Brenda Sealey. Thereafter, the State was allowed ten peremptory strikes. Of those ten strikes, nine strikes were of male jurors. The jury impaneled for this case consisted entirely of women jurors. The strike list used by the defendant containing the names of all the jurors and the strikes exercised by the State and the defendant is attached hereto and incorporated herein by reference as Exhibit "B".

/S/ John F. Porter, III
John F. Porter, III

SWORN to and subscribed before me on this the 3rd day of January, 1992.

/S/ Judith L. Woodill
Judith L. Woodill

LIVINGSTON, PORTER & PAULK, P.C.

/S/ John F. Porter, III
John F. Porter, III
Attorney for Defendant
P. O. Box 1108
Scottsboro, Alabama 35768
Phone: (205) 259-1919

EXHIBIT "B"

[CR60] Jury Chart showing Strikes

Walter Adkins 28	Evelyn Baker 10	Ken Bishop 27	Mildred Cabiness 3	Brian Casey 23	Debra Clay 11	Freida Culver 36	Truitt Davis 17	Teresa Forrest 6	Trula Gray 2
Joyce Hayes 9	Rhonda Johnson 26	Willodean Kilgore 31	William Lusk 16	Sharon Medley 39	Denise Morris 21	Eva Parks 32	Billy Prince 5	Barbara Rogers 25	Brenda Seeley
Elaine Steeley 18	Randell Sullivan 7	Ella Thomas	Ira Venable 29	Betty Whatley 4	Jeri Wilhelm 12	Ozell Womack 40	Dennis Young 24	Teresa Arnold 33	Avile Baldwin 14
John Brooks 19	Faye Carter 8	Jo Chrisman 30	Davis Cooper 15	Norman Daniels 34	Angela Evans 1	20	35	13	38

STRIKE NUMBER	M_1	M_2	M_3	F_4	M_5	M_6	M_7	M_8	M_9	M_{10}	11	12	13	14
STATE/PLAINTIFF STRIKE	29	23	17	32	5	28	16	27	19	M_{11}				
DEFENDANT'S STRIKE	8	25	36	11	9	10	4	12	39	40	15			
	F	F	F	F	F	F	F	F	F	F	M			

Ira Venable 29
Brian Casey 23
Truitt Davis 17
Eva Parks 32
Billy Prince 5
Walter Adkins 28
William Lusk 16
Ken Bishop 27
John Brooks 19
Norman Daniels 34

EXHIBIT "B"

09

[CR61]

THIRTY-EIGHTH JUDICIAL CIRCUIT OF ALABAMA
IN THE CIRCUIT COURT OF
JACKSON COUNTY, ALABAMA

STATE OF ALABAMA, ex rel., TERESIA BIBLE, PLAINTIFF	)	CIVIL ACTION NO.: 90-314
VS.	)	
JAMES EDWARD BOWMAN, DEFENDANT	)	

ORDER ON RULE 59 MOTION

This court has reviewed the motion of the defendant under Rule 59 and has reviewed the voir dire conducted on trial of this cause, and the affidavit of counsel for the defendant reflecting the manner in which the jury was impanelled.

The argument of the defendant that he was entitled to have the jury venire quashed in that it was improper for the court to overrule his *Batson* challenge on the basis of gender exclusion is not well taken. Defendant cites the United States Court of Appeals Ninth Circuit case of *U. S. v. DeGross*, 913 Fed. 2d 1417 (1990), and contends that it is authority for applying *Batson v. Kentucky*, 90 L. Ed. 2d 69 (1986) to gender discrimination. At trial, the court denied the defendant's *Batson* challenge and did not require the state's attorney to explain his peremptory challenges of male jurors. It is uncontradicted that there were twelve male persons in a jury venire of thirty-six. Two of those

jurors were excused for cause by the court, and they were Randall Sullivan, Dennis Young, and Brenda Sealey, contrary to the affidavit of defendant's counsel which identifies Davis Cooper as one of the jurors which were removed for cause by the court. Nevertheless, of the remaining thirty-three jurors, ten were male jurors. The defendant was allowed eleven peremptory challenges, and the state was allowed ten peremptory challenges. Nine of the state's peremptory challenges were exercised as to male jurors, and one of the defendant's peremptory challenges was exercised as to a male juror. The resulting jury which was impaneled for the trial and which heard the evidence consisted of all females. The Ninth Circuit Court of Appeals opinion to the contrary, this court is of the opinion that the correct law in this state is as announced by the Alabama Court of Criminal Appeals in *Murphy v. State*, ___ So. 2d ___ (Court of Criminal Appeals ___ October 11, 1991). In that case it was held that the *Batson* doctrine does not extend to gender-based strikes.

Another argument of the defendant is that testimony of Dr. [CR62] Leigh Ann Harmon was improperly admitted to express opinions regarding "composite" paternity blood test results without a proper predicate being laid. The court has examined the witness's testimony and, first of all, is of the opinion that the DNA test involved as one of the three tests made under the supervision of the witness was not the same test in which the Supreme Court of Alabama addressed its six point review test in the *Ex Parte Perry* case. The witness explained that the DNA paternity test is "entirely different" from the DNA forensic test which the Supreme Court of Alabama in the *Perry* case addressed. Transcript, page R-56, 57. The court

is of the opinion that the proper predicate was laid for the opinion being expressed by the witness, and that any objection to that opinion goes to the weight of the witness's opinion and not to its admissibility.

The defendant argues that the chain of custody of the blood samples which were tested was not sufficiently shown as a predicate in order to permit test results to be given in evidence. It is the opinion of the court, upon review of the testimony, that the test samples were taken in the manner contemplated by the statute, § 26-17-12, *Code of Alabama, 1975*, as amended. In the opinion of the court, the predicate laid by the state's direct examination of the witness met the requisite foundation outlined by the court in *Lyle v. Eddy*, 481 So.2d 395 (1985), and the argument of the defendant as to the chain of custody of the blood samples, under the evidence adduced, including the photographs and the fingerprints of the parties from whom the samples were taken, goes to the weight of the evidence and not to its admissibility. There was first hand testimony from more than one witness that blood samples were taken from the mother, the child, and the defendant by a phlebotomist, the date they were taken, that the phlebotomist identified each sample with the photograph of each party and the fingerprints of each party, initialed each vial in which the samples were placed, sealed, by identification, and transmitted them to the witness Harmon, and that the chain of custody was documented on a form of the laboratory, that the blood samples were received by the witness into the laboratory, checked for sign of tampering, and that there was no sign of tampering, and the witness identified the defendant and the mother of the child as two persons shown in the

photographs. (Transcript, pages R-41 – R-53) The mother testified that the samples were taken by the laboratory-employed phlebotomist identified by the witness Harmon, that the samples were signed, photographs of each party were taken, and thumb prints were taken, and the defendant himself acknowledged that his blood sample was taken by the phlebotomist on the same date, that his photograph was the one attached to the sample, and that his signature appeared under the thumb print. The court is of the opinion that the objection of defendant to the chain of custody goes to the weight of the evidence and not to its admissibility. The other grounds of the defendant's Rule 59 motion have been [CR63] examined are equally without merit.

ACCORDINGLY, IT IS ORDERED AND ADJUDGED:

1. That the Rule 59 motion of the defendant for new trial, or, in the alternative, for a judgment not withstanding the verdict, or to alter, amend or vacate the judgment, is denied.

ORDERED this the 6th day of January, 1992.

/S/ Robert L. Hodges
Robert L. Hodges, Circuit Judge

William Tally, Assistant District Attorney
John Porter, III, Attorney

STATE OF ALABAMA – JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEALS
OCTOBER TERM 1991-92

2910210

J.E.B.

v.

State of Alabama ex rel T.B.

Appeal from Jackson Circuit Court

(CV-91-314)

WRIGHT, Retired Appellate Judge

The State of Alabama, on behalf of T.B. (mother), filed a complaint for paternity and child support against J.E.B. (father) in the District Court of Jackson County. After a hearing the district court entered an order adjudicating paternity and ordered the father to pay child support. The father filed notice of appeal to the circuit court. A jury trial was held. [1]

The jury returned a verdict in favor of the mother. The trial court entered an order accordingly. The father appeals.

Initially the father asserts that the trial court erred in overruling the father's objection to the State's peremptory jury strikes based on his allegation that the State's strikes were based entirely on gender.

The father insists that the State improperly used its peremptory strikes to purposefully eliminate men from the jury. He suggests that such actions were in violation of his rights to equal protection and due process. He

requests that this court extend the *Batson v. Kentucky*, 476 U.S. 79 (1986), principle, which prohibits peremptory strikes based solely upon race, to include gender-based strikes.

This issue has previously been addressed by the court of criminal appeals and the supreme court. *Fisher v. State*, 587 So. 2d 1027 (Ala. Crim. App.), *cert. denied* 587 So. 2d 1039 (Ala. 1991); *Daniels v. State*, 581 So. 2d 536 (Ala. Crim. App. 1990), *cert. denied* 581 So. 2d 541 (Ala. 1991); *Dysart v. State*, 581 So. 2d 541 (Ala. Crim. App. 1990), *cert. denied* 581 So. 2d 545 (Ala. 1991). The supreme court recently revisited the issue in *Ex parte Murphy*, [Ms. March 20, 1992] [2] ___ So. 2d ___ (Ala. 1992), and declined to extend the *Batson* principle to gender-based strikes. We must follow the decisions of the supreme court. § 12-3-16, Code 1975.

The father next contends that the blood test results should have been excluded because the State failed to establish a proper chain of custody. He specifically asserts that the phlebotomist's failure to testify was fatal to the admissibility of the blood test results.

Dr. Leigh Ann Harmon, the supervisor of the University of Alabama at Birmingham Immunogenetics/DNA Diagnostic Laboratory, testified that along with the blood samples she received an Immunogenetics/DNA Diagnostic Laboratory Paternity Chain of Custody Document. The document was developed in order to allow the supervisor to confirm the chain of custody without having to bring numerous laboratory personnel to court. Dr. Harman thoroughly discussed the document and its

safety devices. She testified in detail as to her laboratory's procedures for drawing blood samples and assuring proper identification of both the individuals having the test and the blood samples drawn from those individuals. She testified that once the blood samples [3] were received by the laboratory they were checked for any sign of tampering. She stated that there was no sign of tampering, that the box was taped, the tape was intact, and the tape was initialed by the person who sealed and delivered it.

We find that a proper chain of custody was sufficiently established by Dr. Harman's testimony. *Lyle v. Eddy*, 481 So. 2d 395 (Ala. Civ. App. 1985).

The father asserts that the trial court erred in allowing into evidence the results of the DNA test without first establishing that the test "met the requirements of the recent supreme court holding in the case of *Ex parte Perry*, 586 So. 2d 242 (Ala. 1991)."

Ex parte Perry pertains to the admissibility of DNA test results in a forensic setting. That case clearly distinguishes between forensic testing and clinical testing (which we have in this case). The strict admissibility requirements of *Ex parte Perry* are not applicable in a paternity action.

The judgment of the trial court is affirmed.

The foregoing opinion was prepared by Retired Appellate Judge L. Charles Wright while serving on active duty status as a judge of this court under the [4]

provisions of § 12-18-10(e), Code 1975, and this opinion is hereby adopted as that of the court.

AFFIRMED.

All the judges concur.

OFFICE OF
CLERK OF THE COURT OF CIVIL APPEALS
STATE OF ALABAMA
MONTGOMERY
CV 91-314

Re: CIV. 2910210 July 17, 1992

J.E.B. vs. *STATE OF ALABAMA, ex rel T.B.*

Appellant Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Court of Civil Appeals:

____ Court reporter granted additional time to file reporter's transcript to and including

____ Clerk/Register granted additional time to file clerk's record/record on appeal to and including

____ Appell___ granted 7 additional days to file brief(s) to and including

____ Appellant(s) granted 7 additional days to file reply brief(s) to and including

____ Record on Appeal filed on this date.

____ Appendix Filed on this date.

____ Submitted on Briefs

XXX Application for rehearing overruled. No opinion written on rehearing.

___ Permission to file amicus curiae briefs granted.

___ Rules suspended

___ Transferred to the Supreme Court for lack of jurisdiction. A/N

/s/ John H. Wilkerson, Jr.
Clerk, Court of Civil Appeals of Alabama

THE STATE OF ALABAMA – JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

October 23, 1992

1911717

Ex parte J.E.B.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS

(Re: J.E.B. v. State of Alabama, ex rel. T.B.)

(CIV 2910210 (Jackson CV-91-314))

CERTIFICATE OF JUDGMENT

Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

KENNEDY, J. – Hornsby, CJ., Maddox, Shores and Houston, JJ., concur.